

Continued

For the reasons stated, the petition of the
applicants should be affirmed, and the admission of the
same should be granted, and the same registered in
District Court with directions to issue on the same
that the case is now closed.

MARCH 11, 1903

Respectfully submitted

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WITNESSES
John D. H. H.
Jas. E. G. G.
Dennis B. R. R.
John B. H. H.

Witnessed by me & my clerk
at New York, N. Y.
Washington, D. C. 1903

Witnessed by me & my clerk
at New York, N. Y.
New York, N. Y. 1903

By Clerk

By Clerk

Dennis B. H. H.
Clerk of Court
University of Iowa
New York, N. Y. 1903

By Clerk

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States

Article I, section 1:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I, section 2, clauses 1, 2:

"The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

"No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

Article I, section 2, clause 5:

"The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment."

Article I, section 3, clause 3:

"No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen."

Article I, section 3, clauses 5, 6 and 7:

"The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

"The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

"Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

Article I, section 5:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

"Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

"Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

"Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting."

Article I, section 6:

"The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They

shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

“No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.”

Article I, section 9, clause 3:

“No Bill of Attainder or ex post facto Law shall be passed.”

Article III, section 1:

“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

Article III, section 2:

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a

State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

“In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

“The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”

Article IV, section 4:

“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”

Article VI, clauses 2, 3:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

“The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all

executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

Amendment V:

"No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

Amendment XIII:

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"SECTION 2. Congress shall have the power to enforce this article by appropriate legislation."

Amendment XIV:

"SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

""

"SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or

comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

“....

“SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

Amendment XV:

“SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

“SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.”

Amendment XX:

“SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

“SEC. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.”

United States Statutes

Act of March 3, 1875, ch. 137 [§ 1], 18 Stat. 470:

“That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between

citizens of different States or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects; and shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable therein. But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court. And no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceeding, except as hereinafter provided; nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant and bills of exchange. And the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions prescribed by law."

Force Act, ch. 114, § 23, 16 Stat. 146 (1870):

"That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, representative or delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to

vote to citizens who so offered to vote, on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States, and secured by this act."

Legislative Branch Appropriations Act, 1967,
P.L. 89-545, 80 Stat. 354, 358 (1966):

"... [T]he following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending June 30, 1967, and for other purposes, namely:

"For compensation of Members (wherever used herein the term 'Member' shall include Members of the House of Representatives and the Resident Commissioner from Puerto Rico), \$14,148,975."

Legislative Branch Appropriation Act, 1968,
P.L. 90-57, 81 Stat. 127, 130 (1967):

"... [T]he following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Legislative Branch for the fiscal year ending June 30, 1968, and for other purposes, namely:

"For compensation of Members (wherever used herein the term 'Member' shall include Members of the House of Representatives and the Resident Commissioner from Puerto Rico), \$14,160,700."

Legislative Branch Appropriations Act, 1969,
P.L. 90-417, 82 Stat. 398, 401, 403 (1968):

"... [T]he following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the

Legislative Branch for the fiscal year ending June 30, 1969, and for other purposes, namely:

".....

"For compensation of Members (wherever used herein the term 'Member' shall include Members of the House of Representatives and the Resident Commissioner from Puerto Rico), \$14,160,700.

".....

"For miscellaneous items, exclusive of salaries unless specifically ordered by the House of Representatives, . . . \$8,000,000."

2 U.S.C. § 25:

"Oath of Speaker and Members of House"

"At the first session of Congress after every general election of Representatives; the oath of office shall be administered by any Member of the House of Representatives to the Speaker; and by the Speaker to all the Members present, and to the Clerk, previous to entering on any other business; and to the Members who afterward appear, previous to their taking their seats.

"The Clerk of the House of Representatives of the Eightieth and each succeeding Congress shall cause the oath of office to be printed, furnishing two copies to each Member who has taken the oath of office in accordance with law, which shall be subscribed in person by the Member who shall thereupon deliver them to the Clerk, one to be filed in the records of the House of Representatives, and the other to be recorded in the Journal of the House and in the Congressional Record; and such signed copies, or certified copies thereof, or of either of such records thereof, shall be admissible in evidence in any court of the United States, and shall be held conclusive proof of the fact that the signer duly took the oath of office in accordance with law."

2 U.S.C. § 31:

"Compensation of Members of Congress"

"The compensation of Senators, Representatives in Congress, and the Resident Commissioner from Puerto Rico shall be at the rate of \$30,000 per annum each. The compensation of the Speaker of the House of Representatives shall be at the rate of \$43,000 per annum. The compensation of the Majority Leader and the Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representatives shall be at the rate of \$35,000 per annum each."

2 U.S.C. § 34:

"Representatives' salaries payable monthly"

"Representatives-elect to Congress, whose credentials in due form of law have been duly filed with the Clerk of the House of Representatives, in accordance with the provisions of section 26 of this title, may receive their compensation monthly, from the beginning of their term until the beginning of the first session of each Congress, upon a certificate in the form now in use to be signed by the Clerk of the House, which certificate shall have the like force and effect as is given to the certificate of the Speaker."

2 U.S.C. § 35:

"Salaries payable monthly after taking oath"

"Each Member, after he has taken and subscribed the required oath, is entitled to receive his salary at the end of each month."

2 U.S.C. § 78:

"Same; duties"

"It shall be the duty of the Sergeant at Arms of the House of Representatives to attend the House during its sittings, to maintain order under the direction of the

Speaker, and, pending the election of a Speaker or Speaker pro tempore, under the direction of the Clerk, execute the commands of the House and all processes issued by authority thereof, directed to him by the Speaker, keep the accounts for the pay and mileage of Members and Delegates, and pay them as provided by law."

2 U.S.C. § 80:

"Same; disbursement of compensation of Members"

"The moneys which have been, or may be, appropriated for the compensation and mileage of Members shall be paid at the Treasury on requisitions drawn by the Sergeant at Arms of the House of Representatives, and shall be kept, disbursed, and accounted for by him according to law, and he shall be a disbursing officer, but he shall not be entitled to any compensation additional to the salary fixed by law."

2 U.S.C. § 83:

"Same; tenure of office"

"Any person duly elected and qualified as Sergeant at Arms of the House of Representatives shall continue in said office until his successor is chosen and qualified, subject, however, to removal by the House of Representatives."

28 U.S.C. § 1331:

"Federal question; amount in controversy; costs"

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

28 U.S.C. § 1344:

"Election Disputes"

"The district courts shall have original jurisdiction of any civil action to recover possession of any office, except

that of elector of President or Vice President, United States Senator, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be commenced, wherein it appears that the sole question touching the title to office arises out of denial of the right to vote, to any citizen offering to vote, on account of race, color or previous condition of servitude:

“The jurisdiction under this section shall extend only so far as to determine the rights of the parties to office by reason of the denial of the right, guaranteed by the Constitution of the United States and secured by any law, to enforce the right of citizens of the United States to vote in all the States.”

28 U.S.C. § 1361:

“Action to compel an officer of the United States”

“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

28 U.S.C. § 1491:

“Claims against United States generally; actions involving Tennessee Valley Authority”

“The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.”

28 U.S.C. § 2201:

“Creation of remedy”

“In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the

United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

28 U.S.C. § 2202:

"Further relief"

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

28 U.S.C. § 2282:

*"Injunction against enforcement of Federal statute;
three-judge court required"*

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

31 U.S.C. § 671:

*"Appropriations for contingent expenses
of Congress; restrictions"*

"Appropriations made for contingent expenses of the House of Representatives or the Senate shall not be used for the payment of personal services except upon the express and specific authorization of the House or Senate in whose behalf such services are rendered. Nor shall such appropriations be used for any expenses not intimately and directly connected with the routine legislative business

of either House of Congress, and the General Accounting Office shall apply the provisions of this section in the settlement of the accounts of expenditures from said appropriations incurred for services or materials."

Federal Rules of Civil Procedure

Rule 19:

"JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION"

"(a) *Persons to be Joined if Feasible.* A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action."

Rule 23:

"CLASS ACTIONS"

"(a) *Prerequisites to a Class Action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims

or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

“(b) *Class Actions Maintainable.* An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair, or impede their ability to protect their interests; or

“(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

“(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.”

“(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

“(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

“(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

“(3) The judgment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

“(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.”

APPENDIX B

EXCERPTS FROM STATE CONSTITUTIONS AS OF 1787

Connecticut.

[Colonial charter; no provision.]

Delaware

DEL. CONST. art. 5 (1776): "... each house shall . . . judge of the qualifications and elections of its own members They may also severally expel any of their own members for misbehavior, but not a second time in the same sessions for the same offence, if reelected" 1 THORPE, FEDERAL AND STATE CONSTITUTIONS 563 (1909) [hereinafter THORPE].

Georgia

GA. CONST. (1777) [No provision].

Maryland

MD. CONST. arts. IX, X, XXI (1776): "That the House of Delegates shall judge of the elections and qualifications of Delegates."

"... They may expel any member, for a great misdemeanor, but not a second time for the same cause. . . ."

"That the Senate shall judge of the elections and qualifications of Senators." 3 THORPE 1692, 1694.

Massachusetts

MASS. CONST. part II, ch. I (1780): § II, art. IV. "The Senate shall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the constitution; . . ."

§ III, art. X. "The house of representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution" 3 THORPE 1897-99.

New Hampshire

N. H. CONST. part II (1784): "The Senate shall be final judges of the elections, returns, and qualifications of their own

New Jersey

members, as pointed out in this constitution. . . ." 4 THORPE 2460.

N. J. CONST. § V (1776): "That the Assembly, when met, shall have power . . . to be judges of the qualifications and elections of their own members" 5 THORPE 2595.

New York

N. Y. CONST. art. IX, XII (1777): "That the assembly, thus constituted, shall . . . be judges of their own members, . . . in like manner as the assemblies of the colony of New York of right formerly did; . . ."

" . . . that the senate shall, in like manner with the assembly, be the judges of its own members. . . ." 5 THORPE 2631-32.

North Carolina

N. C. CONST. § X (1776): "That the Senate and House of Commons, when met, shall each . . . be judges of the qualifications and elections of their members" 5 THORPE 2790.

Pennsylvania

PA. CONST. § 9 (1776): "The members of the house of representatives . . . shall have power to . . . judge of the elections and qualifications of their own members; they may expel a member, but not a second time for the same cause" 5 THORPE 3084-85.

Rhode Island

[Colonial charter; no provision.]

South Carolina

S. C. CONST. art. XVI (1778): "... the senate and house of representatives, respectively, shall enjoy all other privileges which have at any time been claimed or exercised by the commons house of assembly." 6 THORPE 3252.

Virginia

VA. CONST. (1776) [No provision.]

APPENDIX C

SUMMARY OF PRECEDENTS OF HOUSE OF REPRESENTATIVES AND
SENATE REGARDING EXCLUSION OR EXPULSION ON GROUNDS
OTHER THAN AGE, CITIZENSHIP OR INHABITANCY^b

I. HOUSE OF REPRESENTATIVES

A. *Exclusion Precedents.*(a) *Member excluded.*

(1) *John Young Brown* (Kentucky). Excluded without division from 40th Congress, 1st and 2d Sessions (1867-68), for giving aid and comfort to Confederacy during Civil War. 1 A. HINDS, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 449-50 (1907) [hereinafter cited as "HINDS"]; Legislative Reference Service, *Precedents of the House of Representatives Relating to Exclusion, Expulsion and Censure* (defendants' Exhibit No. 1 in the District Court) 124-27 (1967) [hereinafter cited as "LRS"].

(2) *John D. Young* (Kentucky). Excluded without division from 40th Congress, 1st and 2d Sessions (1867-68) for giving aid to Confederacy during Civil War. 1 HINDS § 451; LRS 128.

(3) *John H. Christy* (Georgia). Not permitted to take oath of office in 40th Congress, 3d Session (1868-69), for giving aid, countenance, counsel and encouragement to the Confederacy. 1 HINDS § 459.

(4) *B. F. Whittemore* (South Carolina). Excluded by vote of 130 to 76 from 41st Congress, 2d Session (1870), for selling appointments to the military and naval academies. 1 HINDS § 464; 2 HINDS § 1273; LRS 48, 163-64.

(5) *George Q. Cannon* (Utah). Excluded (as Delegate from Territory of Utah) without division

from 47th Congress, 1st Session (1882), for admitted practicing of polygamy in open violation of polygamy statute. 1 HINDS § 473; LRS 49-63.

(6) *Brigham H. Roberts* (Utah). Excluded by vote of 268 to 50 from 56th Congress, 1st Session (1899-1900), for conviction for violation of polygamy statute and for disloyalty. 1 HINDS §§ 477-80; LRS 65-108.

(7) *Victor L. Berger* (Wisconsin). Excluded twice by votes of 311 to 1 and 330 to 6 from 66th Congress, 1st, 2d and 3d Sessions (1919-20), for disloyalty to the United States, for giving aid and comfort to a public enemy, for publications of expression hostile to the Government, and for conviction for sedition. 6 C. CANNON, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 56-59 (1935) [hereinafter cited as "CANNON"]; LRS 110-22. [When Berger's conviction was reversed and the prosecution of the charge dropped, he was, upon reelection, admitted to the House. 65 CONG. REC. 7 (1923).]

(b) *Exclusion of Member considered, but not adopted.*

(1) *William McCreery* (Maryland). Not expelled by vote of 89 to 18 from 10th Congress, 1st Session (1807), for alleged violation of state law requiring Member of Congress to be inhabitant of district at time of election and to have resided therein 12 months theretofore. State laws cannot impose additional qualifications for membership in the House. 1 HINDS § 414; LRS 17-18.

(2) *Samuel Marshall and Lyman Trumbull* (Illinois). Marshall not excluded without division from 34th Congress, 1st Session (1856), for violation of state law preventing state judges from running for other offices. State may not impose additional

qualifications for membership in the House. Trumbull's case became moot when he was elected to Senate, which considered exclusion but eventually admitted him. See II, A(b)(1), *infra*. 1 HINDS § 415; LRS 21.

(3) *William B. Stokes and James Mullins* (Tennessee). Not excluded from 40th Congress, 1st Session (1867), for alleged disloyalty during Civil War. Debate indicated that evidence was not sufficient to sustain the allegation. 1 HINDS § 444; LRS 24.

(4) *Kentucky Member Cases* (*James B. Beck, Thomas L. Jones, A. P. Grover, J. Proctor Knott, and L. S. Trimble*). Not excluded without division from 40th Congress, 1st Session (1867), for alleged disloyalty during Civil War. Four were exonerated of charges; the charges against the other (Trimble) were not proved. 1 HINDS §§ 448, 458; LRS 38-39.

(5) *Roderick R. Butler* (Tennessee). Not excluded from 40th Congress, 1st Session (1867), for alleged disloyalty during Civil War. Case made moot by passage of statute removing disabilities for office. 1 HINDS § 455; LRS 41.

(6) *Francis E. Shober* (North Carolina). Not excluded from 41st Congress, 1st Session (1869), for alleged disloyalty during Civil War. Case made moot by passage of statute removing disabilities for office. 1 HINDS § 456; LRS 42.

(7) *John C. Connor* (Texas). Not excluded without division from 41st Congress, 2d Session (1870), for allegedly beating Negro soldiers under his command and for allegedly bribing witnesses, suborning evidence, and perjuring himself before court

martial, which acquitted him of charge of beating. 1 HINDS § 465; LRS 44-46.

(8) *Lewis McKenzie* (Virginia). Not excluded from 41st Congress, 2d Session (1870), for alleged disloyalty during Civil War. Evidence held not to sustain allegation. 1 HINDS § 462; LRS 25.

(9) *S. R. Peters* (Kansas). Not excluded by vote of 106 to 20 from 48th Congress, 1st Session (1883-84), for violation of state law barring state judges from running for other offices. State may not impose additional qualifications for membership in the House. 1 HINDS § 417.

(10) *John W. Langley* (Kentucky). Exclusion from 69th Congress, 1st Session (1925-26); considered for conviction of conspiracy charge. House delayed admission while case was being appealed. Langley resigned after losing appeal, House never having voted on whether to exclude. 6 CANNON § 238; LRS 146.

(11) *Francis H. Shoemaker* (Minnesota). Not excluded by vote of 230 to 75 from 73d Congress, 1st Session (1933), for conviction for federal felony (sending defamatory matter through the mail). Committee on Elections never reported; the nature of the defamatory matter (derogatory remarks about a banker during Depression) and debate indicates that Committee's failure to report was probably a political decision. 77 CONG. REC. 73-74, 131-39 (1933); LRS 32-36.

B. *Expulsion Precedents.*

(a) *Members expelled.*

(1) *John B. Clark* (Missouri). Expelled by vote of 94 to 45 from 37th Congress, 1st Session (1861),

for alleged taking part in Civil War on side of Confederacy. 2 HINDS § 1262. ✓

(2) *John W. Reid* (Missouri). Expelled from 37th Congress, 2d Session (1861), for taking part in Civil War on side of Confederacy. 2 HINDS § 1261; CONG. GLOBE, 37th Cong., 2d Sess. 5 (1861).

(3) *Henry C. Burnett* (Kentucky). Expelled without division from 37th Congress, 2d Session (1861), for taking part in Civil War on side of Confederacy. 2 HINDS § 1261; CONG. GLOBE, 37th Cong., 2d Sess. 7-8 (1861).

(b) *Expulsion of Member considered, but not adopted.**

(1) *Matthew Lyon* (Vermont). Not expelled from 5th Congress, 1st Session (1799) for conviction of crime of sedition. 49 to 45 vote for expulsion failed for lack of two-thirds majority. 2 HINDS § 1284; LRS 140.

(2) *Orasmus B. Matteson* (New York). Not expelled from 35th Congress, 1st Session (1858) for acts committed in previous Congress. 2 HINDS § 1285; LRS 142.

(3) *James Brooks* (New York) and *Oakes Ames* (Massachusetts). Not expelled from 42d Congress, 3d Session (1872), for alleged taking of bribes and seeking to corrupt other members of Congress, respectively, in Credit Mobilier scandal. Censured, rather than expelled, 2 HINDS § 1286; LRS 148-51.

(4) *George Q. Cannon* (Utah). Not expelled from 43d Congress, 2d Session (1874), for practicing

* Upon several occasions, the House has also considered, but rejected, expulsion of a Member for causing personal injury to another Member. 2 HINDS §§ 1642-44, 1655-66; LRS 136-38.

polygamy (before enactment of statute making polygamy a crime). 1 HINDS §§ 468-70; LRS 28-30. [Excluded, however, from 47th Congress, 1st Session. See I, A (a)(5) *supra*.]

(5) *William S. King and John G. Shumaker*. Not expelled from 44th Congress, 1st Session (1874) for alleged bribery and perjury before House committee. 2 HINDS § 1283; LRS 143.

II. SENATE

A. *Exclusion Precedents.*

(a) *Member excluded.*

(1) *Philip F. Thomas* (Maryland). Excluded by vote of 27 to 20 from 40th Congress, 1st and 2d Sessions (1867-68), for giving aid to Confederacy during Civil War. SENATE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS, SENATE COMMITTEE ON RULES AND ADMINISTRATION, SENATE ELECTION, EXPULSION AND CENSURE CASES, S. Doc. No. 71, 87th Cong., 2d Sess. 40 (1962) [hereinafter cited as "SENATE CASES"].

(2) *William Lorimer* (Illinois). Excluded by vote of 55 to 28 from 62d Congress, 2d Session (1912), for bribery of state legislators to obtain election to Senate. There were 102 days of hearings and more than 8,500 pages of transcript. (An earlier attempt to exclude Lorimer failed by a vote of 40 to 46.) SENATE CASES 100-01.

(3) *Frank L. Smith* (Illinois). Excluded by vote of 61 to 23 from 70th Congress, 1st Session (1927-28), for excessive campaign expenditures and acceptance of large campaign contributions from

utilities magnates over whom he was supposed to exercise supervision as member of state regulatory agency. SENATE CASES 122-23.

(4) *William S. Vare* (Pennsylvania). Excluded by vote of 58 to 22 from 70th and 71st Congresses (1927-29), for excessive campaign expenses in primary election and for evidence of fraud and corruption in that election. SENATE CASES 119-22.

(b) *Exclusion of Member considered but not adopted.*

(1) *John M. Niles* (Connecticut). Not excluded from 28th Congress, 1st Session (1844), for alleged mental incapacity. Select committee found him not to be of unsound mind. SENATE CASES 10.

(2) *Lyman Trumbull* (Illinois). Not excluded by vote of 35 to 8 from 34th Congress, 1st Session (1856), for violation of state law barring state judges from running for other offices. State may not impose additional qualifications for membership in the Senate. SENATE CASES 21.

(3) *Benjamin Stark* (Oregon). Not excluded by vote of 26 to 19 from 37th Congress, 2d Session (1862), for alleged disloyalty during Civil War. Seated, subject to investigation for possible expulsion; after investigation, motion of expulsion defeated by vote of 16 to 21. SENATE CASES 34.

(4) *Theodore G. Bilbo* (Mississippi). Not excluded from 80th Congress, 1st Session (1947), for alleged acceptance of gifts from war contractors and illegal intimidation of Negroes in Democratic primary. Allegations based on reports of Senate committees. Question of Bilbo's qualifications tabled until his physical condition permitted him to return to Senate. Bilbo's death made case moot. SENATE CASES 142-44.

B. *Expulsion Precedents.*

(a) *Member expelled.*

(1) *William Blount* (Tennessee). Expelled by vote of 25 to 1 from 5th Congress, 1st Session (1797), for engaging in scheme to seize Spanish Florida and Louisiana with British and Indian aid. SENATE CASES 3.

(2) *Jesse D. Bright* (Indiana). Expelled by vote of 32 to 14 from 37th Congress, 2d Session (1861-62), for writing letter of introduction to Jefferson Davis, the President of the Confederacy, for an acquaintance who wished to dispose of an improvement in firearms. SENATE CASES 30.

(3) *James M. Mason and Robert M. T. Hunter* (Virginia), *Thomas L. Clingman and Thomas Bragg* (North Carolina), *James Chestnut, Jr.* (South Carolina); *A. O. P. Nicholson* (Tennessee), *William K. Sebastian and Charles C. Mitchell* (Arkansas), and *John Hemphill and Louis T. Wigfall* (Texas). Expelled by vote of 32 to 10 from 37th Congress, 1st Session (1861), for having failed to appear in the Senate since the session began. SENATE CASES 28.

(4) *John C. Breckinridge* (Kentucky). Expelled by vote of 37 to 0 from 37th Congress, 2d Session (1861), for having joined the side of the Confederacy. SENATE CASES 29-30.

(5) *Waldo P. Johnson* (Missouri). Expelled by vote of 35 to 0 from 37th Congress, 2d Session (1861-62), for sympathy with, and participation in behalf of, the Confederacy in the Civil War. SENATE CASES 30-31.

(6) *Trusten Polk* (Missouri). Expelled by vote of 36 to 0 from 37th Congress, 2d Session 1861-62),

for expression of sympathy with, and participation in behalf of, the Confederacy in the Civil War. SENATE CASES 31.

(b) *Expulsion of Member considered, but not adopted.*

(1) *John Smith* (Ohio). Not expelled from 10th Congress, 1st Session (1807), for alleged involvement in Aaron Burr conspiracy. Committee found allegation true, but resolution failed to receive a two-thirds majority (19 to 10). SENATE CASES 4-5.

(2) *Benjamin Tappan* (Ohio). Not expelled from 28th Congress, 1st Session (1884), for revealing secret Senate documents to press. Censured by vote of 38 to 7. SENATE CASES 11-13.

(3) *Reed Smoot* (Utah). Not expelled by vote of 42 to 28 from 59th Congress 2d Session (1907), for alleged practicing of polygamy, for encouragement of polygamy by being apostle of Mormon Church, and other related allegations. Found not to be a polygamist, but being apostle of church encouraged polygamy. SENATE CASES 97-98.

(4) *Robert M. LaFollette* (Wisconsin). Not expelled from 65th Congress, 1st Session (1917-18), for speech of "disloyal nature". Vote was 50 to 21 against expulsion. SENATE CASES 110.

(5) *William Langer* (North Dakota). Not expelled by vote of 52 to 30 from 77th Congress, 1st and 2d Sessions (1941-42), for various alleged instances of moral turpitude after committee compiled 10 volumes of evidence and after Senate debated exclusion for 19 days. SENATE CASES 140-41.